Lau Teck Poh & Anor v Ketua Pengarah Jabatan Pengangkutan Jalan Malaysia & Anor (Yeong Oon Kong, intervener)

HIGH COURT (KUALA LUMPUR) — JUDICIAL REVIEW APPLICATION NO 25–233–11 OF 2013
WAN AHMAD FARID J
20 MARCH 2024

Civil Procedure — Judicial review — Certiorari — Application by applicants against decision of Director General of Road Transport Department in cancelling registration of numbers and replacing with new ones — Decision quashed by judicial commissioner — Whether applicants commenced judicial review application on wrong legal footing

Road Traffic — Registration of vehicles — Ownership of registration number — Intervener claimed to be owner of vehicle registration number — Director General of Road Transport Department approved application to register vehicle registration number to intervener when judicial review application was ongoing — Whether first applicant was rightful owner of vehicle registration numb

Sometime in 2012, the first applicant was interested in sourcing the registration numbers for his cars. One Chau Hang Yong ('Chau') represented to the first applicant that he was the registered owner of the numbers: A9, P8 and P9. The first applicant was keen on the said numbers and negotiated the purchase price with Chau. The negotiations culminated in an agreement for the purchase of the numbers. Upon conclusion of the sale of the numbers, the first applicant accordingly paid Chau a total purchase consideration of RM690,000. Chau duly pre-signed the transfer forms to transfer the numbers from Chau to the first and second applicants in the following manner: (a) A9 to the first applicant; (b) P8 to the second applicant; and (c) P9 to the first applicant. The numbers were then duly transferred to the first applicant's name, which was duly reflected in the register of the Road Transport Department ('JPJ'). The JPJ accordingly issued the vehicle registration certificates for the numbers in the first applicant's name. However, the first applicant's acquisition of the numbers was the subject matter of the investigation by the Malaysian Anti-Corruption Commission of Malaysia ('MACC'). At the request of MACC, the first applicant provided all the relevant documents to show that he was a bona fide purchaser of the numbers and had validly acquired the same. Subsequently, sometime in 2013, the first applicant received a letter from the JPJ requesting him to return the numbers. The first applicant responded by asserting that no adverse findings were made

by the MACC as alleged and reiterated that the said numbers were acquired by him lawfully. In response thereto, the first applicant received a letter from JPJ stating that it had no alternative but to terminate the registration of the numbers and to replace them with other numbers. The second applicant received a similarly worded letter for the cancellation of number P8. Dissatisfied, the applicants wrote to the Minister of Transport appealing against the decision of the JPJ to terminate the registration of the numbers. There was no response from the Minister but the Director General of JPJ ('DG') confirmed the earlier decision of the JPJ in cancelling the registration of the numbers and replacing them with the new registration numbers respectively ('the impugned decision'). The DG asserted that the cancellation of the registration numbers was due to the failure of the applicants to comply with the requirements of the Road Transport Act 1987 ('the RTA'), Motor Vehicles (Registration and Licensing) Rules 1959 and JPJ's internal regulations. Aggrieved by the impugned decision, the applicants commenced an application for judicial review to quash the same. The learned judicial commissioner ('JC') allowed the judicial review application and granted an order of certiorari to quash the decision of the DG in affirming the decision of the JPJ. The JC also made an order of mandamus directing the DG to re-register the numbers to the applicant accordingly. The DG appealed to the Court of Appeal. The intervener only came to know about the appeal filed by the DG at the Court of Appeal. The Court of Appeal allowed the notice of motion filed by the intervener seeking leave to intervene. The DG's appeal on the registration numbers P8 and P9 was dismissed by the Court of Appeal. However, the issue with respect to the ownership of the registration number A9 between the applicants and the intervener was remitted to this court for determination. In his affidavit, the intervener affirmed, inter alia, that: (i) the number A9 was initially registered on a motor vehicle owned by one Tunku Sulaiman bin Tunku Kassim ('Tunku Sulaiman'); (ii) by a power of attorney for consideration, Tunku Sulaiman conferred to the intervener to deal with the motor vehicle in the manner that the intervener deemed fit; and (iii) the number A9 was then transferred to a motorcycle and subsequently transferred to the intervener's motor vehicle. The fist applicant responded that the date of registration of number A9 under the intervener's name was 15 January 2016 ('the 2016 decision') which, during this proceeding of judicial review, was still pending and had yet to be disposed of.

Held:

(1) The JC, in granting the order of certiorari quashing the impugned decision, did not make any remark that the application was premised in the wrong provision of the RTA. What was more pertinent was that part of the decision was affirmed by the Court of Appeal. The Court of Appeal found nothing wrong with the intitulement stated in the judicial review application. Had the Court of Appeal found so, it would not have

affirmed the decision of the JC in respect of numbers P8 and P9. The attempt for the intervener to relitigate the issue of intitulement was, therefore, misplaced (see paras 42–43).

(2) The implication of the certiorari order made by the JC was that the impugned decision was never made. The attendant consequence would be that the letter from the DG was irrelevant since it was subsequently quashed, resulting in there being no letter at all in law. The legal implication was that the status quo remained which was that the vehicle registration certificates bearing the applicant's name prevailed. In particular, the registration number A9 in the name of the first applicant prevailed (see paras 46–47).

(3) The DG's action in approving the application made by Tunku Sulaiman in the form of the 2016 decision when this judicial review application was ongoing without alerting the court was completely unacceptable. In any event, there was no evidence that the first applicant, being the registered owner of number A9, was given the right to be heard before the DG made the 2016 decision. This was in breach of the principle of natural justice which rendered the 2016 decision bad in law. Since the 2016 decision was bad in law, the quashing of the impugned decision stood unchallenged. The first applicant was therefore the rightful owner of number A9 (see paras 51–54).

[Bahasa Malaysia summary

Bahasa Malaysia summary Pada tahun 2012, pemohon pertama berminat untuk mendapatkan nombor pendaftaran untuk keretanya. Seorang Chau Hang Yong ('Chau') mewakili kepada pemohon pertama bahawa dia adalah pemilik berdaftar nombor: A9, P8 dan P9. Pemohon pertama berminat dengan nombor tersebut dan berunding harga pembelian dengan Chau. Rundingan itu berakhir dengan perjanjian untuk pembelian nombor tersebut. Selepas penjualan nombor tersebut, pemohon pertama membayar sewajarnya kepada Chau sejumlah RM690,000. Chau dengan sewajarnya menandatangani borang pemindahan untuk memindahkan nombor daripada Chau kepada pemohon pertama dan kedua dengan cara berikut: (a) A9 kepada pemohon pertama; (b) P8 kepada pemohon kedua; dan (c) P9 kepada pemohon pertama. Nombor-nombor itu kemudiannya dipindahkan dengan sewajarnya kepada nama pemohon pertama, yang ditunjukkan dengan sewajarnya dalam daftar Jabatan Pengangkutan Jalan ('JPJ'). JPJ sewajarnya mengeluarkan sijil pendaftaran kenderaan untuk nombor dalam nama pemohon pertama. Walau bagaimanapun, pemerolehan nombor pemohon pertama adalah perkara utama siasatan oleh Suruhanjaya Pencegahan Rasuah Malaysia ('SPRM'). Atas permintaan SPRM, pemohon pertama memberikan semua dokumen yang berkaitan untuk menunjukkan bahawa dia adalah pembeli bona fide nombor itu dan telah memperoleh nombor yang sama secara sah. Selepas itu, pada tahun 2013, pemohon pertama menerima surat daripada

JPJ memintanya mengembalikan nombor tersebut. Pemohon pertama menjawab dengan menegaskan bahawa tiada penemuan bertentangan dibuat oleh SPRM seperti yang didakwa dan mengulangi bahawa nombor tersebut telah diperolehnya secara sah. Sebagai jawapan terhadapnya, pemohon pertama menerima surat daripada JPJ yang menyatakan bahawa ia tidak mempunyai pilihan selain menamatkan pendaftaran nombor dan menggantikannya dengan nombor lain. Pemohon kedua menerima surat yang sama untuk pembatalan nombor P8. Tidak berpuas hati, pemohon menulis kepada Menteri Pengangkutan merayu terhadap keputusan JPJ untuk menamatkan pendaftaran nombor tersebut. Tiada maklum balas daripada Menteri tetapi Ketua Pengarah JPJ ('KP') mengesahkan keputusan awal JPJ yang membatalkan pendaftaran nombor dan menggantikannya dengan nombor pendaftaran baharu masing-masing ('keputusan dipersoalkan'). KP menegaskan pembatalan nombor pendaftaran itu disebabkan kegagalan pemohon mematuhi keperluan Akta Pengangkutan Jalan 1987 ('APJ'), Kaedah-Kaedah Kenderaan Motor (Pendaftaran dan Perlesenan) 1959 dan peraturan dalaman JPJ. Terkilan dengan keputusan dipersoalkan, pemohon memulakan permohonan untuk semakan kehakiman untuk membatalkan perkara yang sama. Pesuruhjaya kehakiman yang bijaksana ('PK') membenarkan permohonan semakan kehakiman dan memberikan perintah certiorari untuk membatalkan keputusan KP dalam mengesahkan keputusan JPJ. PK juga membuat perintah mandamus mengarahkan KP mendaftar semula nombor kepada pemohon sewajarnya. KP merayu kepada Mahkamah Rayuan. Pencelah hanya mendapat tahu tentang rayuan yang difailkan oleh KP di Mahkamah Rayuan. Mahkamah Rayuan membenarkan notis usul yang difailkan oleh pencelah yang memohon kebenaran untuk campur tangan. Rayuan KP ke atas nombor pendaftaran P8 dan P9 telah ditolak oleh Mahkamah Rayuan. Walau bagaimanapun, isu berkenaan dengan pemilikan nombor pendaftaran A9 antara pemohon dan pencelah telah diserahkan kepada mahkamah ini untuk penentuan. Dalam afidavitnya, pencelah mengesahkan, antara lain, bahawa: (i) nombor A9 pada mulanya didaftarkan pada kenderaan bermotor yang dimiliki oleh seorang Tunku Sulaiman bin Tunku Kassim ('Tunku Sulaiman'); (ii) melalui surat kuasa wakil untuk pertimbangan, Tunku Sulaiman memberi pencelah untuk berurusan dengan kenderaan motor itu mengikut cara yang difikirkan sesuai oleh pencelah; dan (iii) nombor A9 kemudiannya dipindahkan ke motosikal dan kemudiannya dipindahkan ke kenderaan motor pencelah. Pemohon pertama menjawab bahawa tarikh pendaftaran nombor A9 di bawah nama pencelah ialah 15 Januari 2016 ('keputusan 2016') yang, semasa prosiding semakan kehakiman ini, masih belum selesai dan masih belum dilupuskan.

Diputuskan:

(1) PK, dalam memberikan perintah certiorari membatalkan keputusan dipersoalkan, tidak membuat sebarang kenyataan bahawa permohonan

itu adalah berdasarkan peruntukan yang salah dalam APJ. Apa yang lebih penting ialah sebahagian daripada keputusan itu disahkan oleh Mahkamah Rayuan. Mahkamah Rayuan mendapati tiada yang salah dengan tajuk yang dinyatakan dalam permohonan semakan kehakiman. Sekiranya Mahkamah Rayuan mendapati demikian, ia tidak akan mengesahkan keputusan PK berkenaan dengan nombor P8 dan P9. Oleh itu, cubaan untuk pencelah untuk litigasi semula isu tajuk adalah salah letak (lihat perenggan 42–43).

(2) Implikasi daripada perintah certiorari yang dibuat oleh PK adalah keputusan dipersoalkan tidak pernah dibuat. Akibatnya adalah surat daripada KP itu tidak relevan kerana ia kemudiannya dibatalkan, menyebabkan tiada surat langsung dalam undang-undang. Implikasi undang-undang ialah status quo kekal iaitu sijil pendaftaran kenderaan yang mengandungi nama pemohon kekal. Khususnya, pendaftaran nombor A9 atas nama pemohon pertama kekal (lihat perenggan 46–47).

(3) Tindakan KP meluluskan permohonan yang dibuat oleh Tunku Sulaiman dalam bentuk keputusan 2016 ketika permohonan semakan kehakiman ini sedang berjalan tanpa memaklumkan mahkamah adalah tidak boleh diterima sama sekali. Walau apa pun, tiada keterangan bahawa pemohon pertama, sebagai pemilik berdaftar nombor A9, diberi hak untuk didengar sebelum KP membuat keputusan 2016. Ini adalah melanggar prinsip keadilan semula jadi yang menjadikan keputusan 2016 itu cacat di sisi undang-undang. Memandangkan keputusan 2016 adalah cacat di sisi undang-undang, pembatalan keputusan dipseroalkan itu tidak dicabar. Oleh itu, pemohon pertama adalah pemilik sah nombor A9 (lihat perenggan 51–54).]

Cases referred to

Penang Development Corporation v Teoh Eng Huat & Anor [1993] 2 MLJ 97; [1993] 2 CLJ 283, SC (refd)

Pengarah Jabatan Pengangkutan Negeri Selangor & Ors v Sin Yoong Ming [2015] 1 MLJ 1, FC (folld)

Pernas OUE (KL) Sdn Bhd trading as Hotel Istana v YB Menteri Sumber Manusia Malaysia & Ors [2016] MLJU 1775, CA (folld)

S Selvaraja a/l T Singarathevar v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor [1997] MLJU 476; [1997] 2 CLJ Supp 275, HC (refd)

Travis Holdings Ltd v Christchurch City Council [1993] 3 NZLR 32, HC (refd)

Legislation referred to

Motor Vehicles (Registration and Licensing) Rules 1959

Road Transport Act 1987 ss 11, 17, 17(2), (6)

Muhammad Shafee Abdullah (with Noor Farhah Mustaffa, Kumutha Malar and

Elton Ti) (Shafee & Co) for the applicant.
Muhammad Hidayat bin Wahab (Senior Federal Counsel, Attorney General's Chambers) for the respondent.
Loo Hsien Yang (YK Loo & Co) for the intervener.

Wan Ahmad Farid J:

[1] This case has a long and chequered history.

[2] Sometime in October 2012, the first applicant was interested in sourcing the registration numbers for his cars. In the process, the first applicant got to know one Chau Hang Yong ('Encik Chau'). Encik Chau represented to the first applicant that he was the registered owner of the following numbers:

(a) A9;

(b) P8; and

(c) P9.

[3] Upon citing the original vehicle registration certificates on the said numbers, which were issued by the Road Transport Department ('JPJ'), the first applicant was convinced that Encik Chau was the legal and beneficial owner of the said numbers. The first applicant was keen on the said numbers and negotiated the purchase price with Encik Chau.

[4] The negotiations culminated in an agreement for the purchase of the said numbers.

[5] Upon conclusion of the sale of the said numbers, the first applicant accordingly paid Encik Chau a total purchase consideration of RM690,000. Encik Chau duly pre-signed the transfer forms, known as JPJ K3, to transfer the said numbers from Chau to the first and second applicants in the following manner:

(a) A9 to the first applicant;

(b) P8 to the second applicant; and

(c) P9 to the first applicant.

[6] The numbers were then duly transferred to the first applicant's name, which was duly reflected in the JPJ's register. The JPJ accordingly issued the vehicle registration certificates for the said numbers in the first applicant's name.

[7] The first applicant's use of the said numbers was uninterrupted until the

same was blacklisted and thereafter cancelled by the JPJ.

INVESTIGATION BY THE MACC

[8] The first applicant's acquisition of the said numbers was the subject matter of the investigation by the Malaysian Anti-Corruption Commission of Malaysia ('MACC'). At the request of MACC, the first applicant provided all the relevant documents to show that he was a bona fide purchaser of the said numbers and had validly acquired the same.

[9] Subsequently, sometime in 2013, the first applicant received a letter from the JPJ requesting him to return the said numbers. The letter enclosed a 'declaration form', which was pre-drafted by the JPJ for the first applicant to sign. The particulars of the declaration form that the first applicant was asked to sign are as follows:

(a) the first applicant was to admit that the investigation by MACC revealed that he had obtained the said numbers unlawfully;

(b) since the said numbers were unlawfully obtained, the applicant agreed to surrender the same to the JPJ; and

(c) the applicant would waive any rights to take legal action against the JPJ after the surrender of the said numbers.

[10] Needless to say, the first applicant refused to sign the declaration form.

[11] The first applicant then instructed his solicitors to write to the first respondent, the Director General of the JPJ ('DG'), to respond to the request from the JPJ. In a letter dated 14 March 2013, the applicant's solicitors wrote to the DG and asserted that no adverse findings were made by the MACC, as alleged. The first applicant, through his solicitors, reiterated that the said numbers were acquired by him lawfully.

[12] In response thereto, the first applicant received a 'Without Prejudice' letter from JPJ Selangor stating that since the JPJ Selangor 'did not receive' any response from the applicant, the JPJ Selangor had no alternative but to terminate the registration of the numbers and to replace them with other numbers. The letter was signed by Encik Adenan bin Md Isa ('Encik Adenan'), the then-acting Director of JPJ Selangor.

[13] The second applicant received a similarly worded letter for the cancellation of number 'P8'.

[14] Dissatisfied with the letter from the JPJ Selangor, the solicitors for the applicants wrote to the Minister of Transport appealing against the decision of the JPJ Selangor to terminate the registration of the said numbers.

[15] There was no response from the Minister but the DG, vide a letter dated 20 September 2013 to the applicants' solicitors, confirmed the earlier decision of the JPJ Selangor in cancelling the registration of the said numbers and replacing them with the new registration numbers respectively ('the impugned decision').

[16] In explaining the impugned decision, the DG asserted that the cancellation of the said registration numbers was due to the failure of the applicants to comply with the requirements of the Road Transport Act 1987, Motor Vehicles (Registration and Licensing) Rules 1959 ('the 1959 Rules') and JPJ's internal regulations.

THE JUDICIAL REVIEW APPLICATION

[17] Aggrieved by the impugned decision, the applicants commenced this application for judicial review to quash the same.

[18] On 8 March 2019, my learned predecessor (who was then a judicial commissioner) allowed the judicial review application and granted an order of certiorari to quash the decision of the DG in affirming the decision of the acting Director of JPJ Selangor to cancel the registration of the said numbers. The learned judicial commissioner also made an order of mandamus directing the DG to re-register the said numbers to the applicant accordingly.

[19] The grounds of the learned judicial commissioner can be summarised as follows:

(a) the acting Director of JPJ Selangor's action in cancelling the said numbers, which was affirmed in the form of the impugned decision by the DG, was ultra vires and illegal as it failed to comply with s 17(2) of the Road Transport Act. The DG failed to establish that he had reason to believe that the said motor vehicles had been used or were intended to be used for an unlawful purpose. In any event, the applicants were not given the opportunity to make any representation before the cancellation of the said numbers;

(b) the impugned decision was in breach of the *audi alteram partem* principle of natural justice and tainted with procedural impropriety; and

(c) the impugned decision was irrational, unreasonable and tainted with mala fide. The DG failed to inform the applicants that the JPJ had proceeded to register the registration numbers 'P8' and 'P9' on motor

vehicles belonging to one Ch'ng Ewe Gee less than a month after informing the applicants that the JPJ had cancelled the registration numbers. Encik Adenan, in his affidavit, failed to explain why the relevant numbers, which he had cancelled because of the alleged non-compliance with the Road Transport Act and the 1959 Rules, had now become 'valid'.

AT THE COURT OF APPEAL

[20] Aggrieved by the decision of this court, the DG appealed to the Court of Appeal.

[21] The intervener, Yeong Oon Kong, was unaware of the proceedings before this court at first instance. It was only in June 2020 that the intervener came to know about the appeal filed by the DG at the Court of Appeal.

[22] On 4 March 2021, the Court of Appeal allowed the notice of motion filed by the intervener seeking leave to intervene. The notice of motion was anchored on the following grounds:

(a) the intervener was the owner of the motor vehicle bearing registration number 'A9';

(b) as the registered owner of the registration number 'A9', the intervener would, one way or the other, be affected by the decision of the Court of Appeal; and

(c) the intervener, through his solicitors, had written to the DG in May 2020 to seek information on the status of the appeal before the Court of Appeal, but to no avail.

[23] On 26 January 2023, the DG's appeal on the registration numbers 'P8' and 'P9' was dismissed by the Court of Appeal. However, the issue with respect to the ownership of the registration number 'A9' between the applicants and the intervener was remitted to this court for determination.

[24] The order of the Court of Appeal, inter alia, states as follows:

MAKA ADALAH DENGAN SEBULAT SUARA DIPERINTAHKAN seperti berikut:

a) Rayuan dibenarkan sebahagian;

b) Bahawa Perintah Mahkamah Tinggi berkenaan dengan Nombor Pendaftaran 'P8' dan 'P9' disahkan;

c) Kes berkenaan hakmilik No. Pendaftaran A9 antara Pemohon dan Pencelah

A d) diremitkan semula ke Mahkamah Tinggi dan kos dalam kausa di Mahkamah Tinggi.

REMISSION TO THE HIGH COURT: THE INTERVENER'S CASE

B **[25]** Since the Court of Appeal had remitted the matter to this court on the issue of the ownership of the registration number 'A9', I had instructed the parties to file their respective affidavits.

C **[26]** The intervener filed his affidavit in encl 71 ('IA71'). In response thereto, the first applicant filed his affidavit in reply in encl 73 ('AIR73'). The intervener then filed his further affidavit in encl 74 ('IA74').

[27] The DG did not file any further affidavit.

D **[28]** In his IA71, the intervener affirmed as follows:

(a) he is the registered owner of a Mercedes Benz ('the said Mercedes') bearing registration number 'A9'. The said number was duly registered by the JPJ with the Vehicle Registration Certificate No B9374592;

E (b) the number 'A9' was initially registered on a Fiat Ardita 2000 ('the said motor vehicle') owned by one Tunku Sulaiman bin Tunku Kassim;

(c) according to the registration book, Tunku Sulaiman had caused the said motor vehicle to be registered under his name with the registration number 'A9' on 21 September 1963;

F (d) sometimes in March 2014, Tunku Sulaiman applied to the JPJ in Form JPJK16 for the JPJ to confirm the registration record of the said vehicle;

(e) after a series of correspondences, the intervener asserted that finally, the DG confirmed that the number 'A9' should be re-registered in the name of Tunku Sulaiman;

G (f) by a power of attorney for consideration dated 11 August 2015, Tunku Sulaiman conferred to the intervener to deal with the said motor vehicle in the manner that the intervener deemed fit;

H (g) the number A9, which was registered on the said motor vehicle, was then transferred to a motorcycle with the registration number 'BMX 87'. The interchange was duly registered by the JPJ; and

I (h) the intervener subsequently transferred the number A9 from his motorcycle to the said Mercedes.

[29] The intervener asserted that the applicant's version that registration number 'A9' was registered in Encik Chau's name on 11 December 2012 was

incorrect. In any event, there is no trail revealed in the affidavit in support of the applicants in encl 3 ('AIS3') as to how Encik Chau acquired the number 'A9'.

THE APPLICANTS' RESPONSE

[30] In his AIR73, the first applicant affirmed as follows:

(a) the date of registration of number 'A9' under the intervener's name was 15 January 2016 ('the 2016 decision'), which, during this proceeding of judicial review, was still pending and has yet to be disposed of; and

(b) the first applicant contended that the intervener should have filed an action for negligence against the DG on the issuance of the registration number 'A9'.

[31] In para 16 of AIR73, the first applicant averred that the intervener has no locus standi to intervene as the intervener was not in any way involved in the decision-making process of the DG.

THE INTERVENER'S SUBMISSION

[32] Learned counsel for the intervener mounted his attack on the applicants' case by contending that the applicants have proceeded on a cause of action unknown to the law. According to learned counsel, the applicant's reliance on s 17(6) of the Road Transport Act is misplaced. Learned counsel contended that s 17 only regulates the issuance of motor vehicle licenses. On the contrary, learned counsel for the intervener highlighted that the more appropriate provision should have been s 11 of the Road Transport Act, which outlines the procedure for assigning a particular vehicle registration number.

[33] Learned counsel then submitted that there is no basis for the applicants to challenge the cancellation of the registration of the said numbers premised upon s 17 of the Road Transport Act.

[34] Secondly, learned counsel for the intervener submitted that in a judicial review application, prerogative relief ought to be refused if third-party rights will be affected. Citing the judgment of the New Zealand High Court in *Travis Holdings Ltd v Christchurch City Council* [1993] 3 NZLR 32, learned counsel for the intervener submitted that the court ought to consider the effect which any relief of the kind sought would have on third parties.

[35] In the circumstances, learned counsel for the intervener submitted that the number 'A9' ought not to be granted to the first applicant since this would adversely affect the right of the intervener as the current owner of that registration number.

[36] In any event, learned counsel submitted that the intervener was a total stranger to the impugned decision. Since the intervener was validly assigned the number 'A9', any attempt to deprive him of this right would occasion substantial injustice to him.

[37] Thirdly, learned counsel for the intervener submitted that the 2016 decision to register the intervener of the number 'A9' was not affected by the impugned decision which was made in 2013. Learned counsel contended that the 2016 decision remained valid as the impugned decision was only quashed in 2019. My attention was then drawn to the judgment of the Supreme Court in *Penang Development Corporation v Teoh Eng Huat & Anor* [1993] 2 MLJ 97; [1993] 2 CLJ 283. The case carries the proposition that an order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

[38] It is for this reason that learned counsel for the intervener argued that the 2016 decision remains valid and binding in the absence of any challenge to the same.

[39] Fourthly, learned counsel further submitted that when the number 'A9' was assigned to the intervener in 2016, the impugned decision of the DG was still valid and existed. The intervener's contention is that since the maker of the 2016 decision was unaware of the invalidity of the 2013 impugned decision, the 2016 decision will remain valid, binding and enforceable.

ANALYSIS

[40] I will first address the issue of whether the applicants have commenced this judicial review application on the wrong legal footing. As can be seen from the application in encl 2, the applicants anchored their application on s 17(6) of the Road Transport Act. It provides as follows:

> Any person, being an applicant for or holder of a motor vehicle licence, who is aggrieved by the decision of the Director General to refuse to grant or to cancel such licence may, within twenty-one days of the date of confirmation by the Director General under subsection (5), appeal to the Minister, and on such appeal the

> Minister after such inquiry, if any, as he thinks necessary may make such order as he considers fit, and any order so made shall be binding on the Director General and on the appellant.

[41] I have to underline that in her grounds of judgment, the learned judicial commissioner had no issues with the intitulement. On the contrary, the learned judicial commissioner held that s 17(6) expressly states that any licence holder 'who is aggrieved by the decision of the Director General to cancel such licence' may appeal to the Minister against the decision. Therefore, according to the learned judicial commissioner, the final decision in respect of motor vehicle licences lies with the DG.

[42] In short, the learned judicial commissioner, in granting the order of certiorari quashing the impugned decision, did not make any remark that the application was premised on the wrong provision of the Road Transport Act. What is more pertinent is that part of the decision was affirmed by the Court of Appeal. It should be noted that the Court of Appeal found nothing wrong with the intitulement stated in the judicial review application. Had the Court of Appeal found so, it would not have affirmed the decision of the learned judicial commissioner in respect of numbers 'P8' and 'P9'.

[43] The attempt for the intervener to relitigate the issue of intitulement is, therefore, misplaced. To re-open the issue would have the implication of me, as a High Court judge, revisiting the decision made by the Court of Appeal which I am bound to follow. In *S Selvaraja a/l T Singarathevar v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1997] MLJU 476; [1997] 2 CLJ Supp 275, it was that under the principle of stare decisis, the court below is bound to follow the decision on a point which constituted a ratio decidendi of a superior court.

[44] I will now address the remaining issues raised by the intervener.

[45] It is to be recalled that the 2013 impugned decision was quashed by the learned judicial commissioner. What would be the implication of granting the order of certiorari to an impugned decision? The short answer to the question is it is as if the impugned decision was never made. If any authority is needed on the aforesaid proposition, it can be found in the judgment of the Court of Appeal in *Pernas OUE (KL) Sdn Bhd trading as Hotel Istana v YB Menteri Sumber Manusia Malaysia & Ors* [2016] MLJU 1775. Ummi Kalthum Abdul Majid JCA, in delivering the judgment of the court, remarked as follows:

> The question which we need to ask ourselves was what was the effect of the first High Court decision when it quashed the Minister's first decision? We were of the view that the first High Court decision had the effect of quashing the Minister's first decision as if it was never made.

A **[46]** The implication of the certiorari order made by the learned judicial commissioner is that the impugned decision was never made. If the impugned were never made, the attendant consequence would be that the letter dated 20 September 2013 from the DG is irrelevant since it was subsequently quashed, resulting in there being no letter at all in law.

B

[47] What would be the legal implication if there was no such letter in law? The legal implication is that the status quo remains. What is the status quo? The status quo is that the vehicle registration certificates bearing the applicant's name prevail. In particular, the registration number 'A9' in the name of the first
C applicant prevails.

[48] The question that arises is, what is the legal status of the 2016 decision? It is to be recalled that Tunku Sulaiman himself was not sure whether there was
D a proper record of his purported ownership of number 'A9'. His motor vehicle was left idle for so long that he had to apply and fill in *Borang Permohonan Pengujudan dan Pengesahan Rekod Kenderaan* in *Borang JPJK16* on 12 March 2014. In the form, Tunku Sulaiman stated that his motor vehicle was inactive due to:

E

> Sebab *gear box* kenderaan tidak dapat ganti yang lain.

[49] It took two years for the JPJ to issue the confirmation of the record despite having Encik Chau in the system as the registered owner of number 'A9'
F since 11 December 2012. This is admitted by the intervener in para 15(a) of IA10:

> Merujuk Perakuan Pendaftaran Kenderaan dengan nombor pendaftaran 'A9' yang diperolehi sewaktu prosiding di Mahkamah Rayuan dengan Nombor Siri 3831436 di atas nama Chau Hang Yong, dokumen tersebut menunjukkan bahawa ia telah
G didaftarkan di bawah nama Chau pada 11 Disember 2012.

That Encik Chau is the registered owner of the number 'A9' is also confirmed by Encik Adenan in his affidavit in reply in encl 10 ('AIR10').

H **[50]** However, what is more disturbing is, in his AIR10, which was dated 7 April 2014, Encik Adenan did not even allude to the fact that there was a pending application made by Tunku Sulaiman in Borang JPJK16, which was eventually approved by the DG.

I **[51]** That aside, I find that the DG's action in approving the application made by Tunku Sulaiman in the form of the 2016 decision when this judicial review application is ongoing without alerting the court is completely unacceptable.

[52] In any event, there is no evidence before me that the first applicant, being the registered owner of number 'A9', was given the right to be heard before the DG made the 2016 decision. This was in breach of the principle of natural justice which renders the 2016 decision bad in law.

[53] Since the 2016 decision is bad in law, the quashing of the impugned decision stands unchallenged.

[54] The first applicant is therefore the rightful owner of number 'A9'.

[55] This court is sympathetic to the fate of the intervener. The denial of his right is due to the negligence of the DG. In that sense, the applicant's remedy does not lie in a reviewing court. He has to take his case in a civil court.

FINDINGS

[56] In the result, I reaffirm that the impugned decision in respect of number 'A9' is bad in law and is hereby quashed.

[57] This court reasserts that the first applicant is the rightful owner of number 'A9'.

[58] Costs RM3,000 is granted against the first respondent.

[59] As against the intervener, there shall be no order as to costs.

[60] By way of a post-script and for the benefit of the respondents I would like to reiterate the instructive judgment of the Federal Court in *Pengarah Jabatan Pengangkutan Negeri Selangor & Ors v Sin Yoong Ming* [2015] 1 MLJ 1:

> We are of the view that the registers maintained by the department pursuant to s 8 of the Act must contain accurate particulars of all vehicles registered by the department. This is because the prospective purchasers of the vehicles and those involved in the motor trade rely on such information to conduct private and commercial transactions. If the registers are not reliable they will affect those in the motor trade industry and the public who purchase secondhand vehicles.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh